



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, MNRL, FFL

Introduction

On June 16, 2018, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) requesting an Order of Possession for Unpaid Rent, an Order of Possession for Cause, a Monetary Order for Damages, a Monetary Order for Unpaid Rent, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord and Tenants attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matters

The Landlord testified that the Tenants had moved out of the rental unit; therefore, he did not require an Order of Possession. The Landlord was only requesting a Monetary Order for Unpaid Rent. In accordance with Section 64(3) of the Act, I have amended the Landlord’s Application by removing his claim for various Orders of Possession and his monetary claim for loss of use of personal space.

Issues to be Decided

Should the Landlord receive a Monetary Order for unpaid rent, in accordance with Section 67 of the Act?

Should the Landlord recover the cost of the filing fee, in accordance with Section 72 of the Act?

Background and Evidence

The Landlord and the Tenants agreed on the following terms of the Tenancy Agreement:

The tenancy began on April 29, 2017 as a two-month, fixed term tenancy that, after another six-month term, continued as a month-to-month tenancy. The monthly rent of \$1,200.00 was due on the first of each month. The Tenants paid a \$600.00 security deposit and a \$600.00 pet damage deposit at the beginning of their tenancy. The Tenants moved out of the rental unit on June 30, 2018, as a result of an undisputed Two-Month Notice to End Tenancy for Landlord's Use of Property (the "Two-Month Notice") that was served on April 26, 2018.

Landlord's Evidence:

The Landlord stated that he expected that the Tenants would pay their May 2018 rent and that they would not have to pay their June 2018 rent, in accordance with the compensation rules for a Two-Month Notice.

The Landlord testified that there had been some discussion with the Tenants about whether they should have had to pay a pet damage deposit as they claimed that they had a service dog and that, according to the Residential Tenancy Branch, service dogs do not require deposits. The Landlord told the Tenants to supply him with the certification for their dog and he would consider whether it applied.

The Landlord stated that, in May, he received \$600.00 from the Tenants and a letter stating that because he did not return their pet damage deposit, that the Tenants were deducting that amount (\$600.00) from their May 2018 rent in accordance with Section 19 of the Act. The Tenants included a copy of a card that indicated that the Tenants' dog was a Canadian Service Dog according to the Assistance Dogs of America's registry.

The Landlord did not believe that the certification met the requisites of the *Guide Dog and Service Dog Act* and therefore, that the dog was not a BC Service Dog. As a result, the Landlord served the Tenants a 10-Day Notice for Unpaid Rent on May 4, 2018 (the "10-Day Notice"). The Tenants did not dispute the 10-Day Notice and on June 16, 2018, the Landlord applied for Dispute Resolution and asked for an Order of Possession for Unpaid Rent.

The Landlord is claiming that the Tenants did not have a certified service dog, that they failed to pay their full rent in May 2018, failed to dispute the 10-Day Notice and as such, the tenancy should have ended on May 20, 2018, as noted on the 10-Day Notice. The Landlord feels that he should be compensated for lost rent in June 2018, when the Tenants lived in the rental unit without paying any rent.

The Landlord stated that he did return the Tenants' security deposit when they moved out of the rental unit. The Landlord claimed that either the Tenants didn't pay half of May 2018's rent and he still holds the Tenants' pet damage deposit of \$600.00 or that they did pay the May 2018 rent and he doesn't hold the \$600.00 pet damage deposit.

Tenants' Evidence:

The Tenants didn't dispute most of the Landlord's evidence. They testified that they believed that their dog was properly registered and certified as a Canadian Service Dog and that the Landlord should not have collected a pet damage deposit for the dog. They stated that they paid \$600.00 and advised the Landlord to keep the pet damage deposit as the balance for May 2018 rent.

The Tenants acknowledged that they did not pay rent for June 2018 as they did not dispute the Landlord's Two-Month Notice and took advantage of the one-month's compensation.

Analysis

When considering my Decision, I will be referencing Sections 18 and 19 of the Act that refer to terms respecting pets, pet damage deposits and the limits on the amount of deposits; Section 38 of the Act that deals with the return of pet damage deposits and Section 7(1) of the Act which establishes that a Tenant who does not comply with the Act, the Regulations or the Tenancy Agreement must compensate the Landlord for damage or loss that results from that failure to comply. Section 67 of the Act establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order the responsible party to pay compensation to the other party.

In order to claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof. The Applicant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the Tenancy Agreement or a contravention of the Act on the part of the other party. Once that has been established, the Applicant must then provide evidence that can verify the actual monetary amount of the loss or damage.

The Tenants claimed that the Landlord should not have collected a pet damage deposit as their dog was a service dog. The Tenants quoted the Residential Tenancy Branch's website that indicated; "Certified guide and service dogs are legally allowed to live in rental properties – Landlords cannot require a pet damage deposit for these animals." Furthermore, the Tenants referred to Section 18 of the Act that speaks to terms

respecting pets and pet damage deposits and that the requirement for Tenants to pay a pet damage deposit is subject to the *Guide Dog and Service Dog Act*.

I have reviewed both the *Residential Tenancy Act*, the *Residential Tenancy Regulations* and the *Guide Dog and Service Dog Act* and there is no legislation that confirms that Landlords cannot require a pet damage deposit for these animals. The certification that the Tenants supplied the Landlord does not seem to meet the standards set for a Service Dog according to the *Guide Dog and Service Dog Act* as the certification provided does not specifically mention provincial certification. I find that the Tenants failed to provide sufficient evidence to establish whether their dog was a certified Service Dog pursuant to the *Guide Dog and Service Dog Act* and whether they are exempt from paying a pet damage deposit for their dog.

The Tenants deducted their pet damage deposit from their May 2018 rent based on their interpretation of Section 19 of the Act. Subsection (2) states that if a Landlord accepts a security deposit or a pet damage deposit that is greater than $\frac{1}{2}$ of one month's rent, the Tenants may deduct the overpayment from rent. I find that the Landlord did not accept a pet damage deposit that is greater than $\frac{1}{2}$ of one month's rent as he accepted \$600.00, which is $\frac{1}{2}$ of the \$1,200.00 rent. As such, I also find that the Tenants breached Section 21 of the Act by applying the pet damage deposit to the May 2018 rent without the Landlord's written consent.

During the hearing, the parties did not provide specific details about the Ten-Day Notice that was served on May 4, 2018 for unpaid rent as the Landlord was no longer pursuing an Order of Possession; however, the Landlord is claiming that if the Tenants were found to have not fully paid their rent for May 2018, that the Ten-Day Notice would have been valid and therefore, the tenancy would have been ended according to the Ten-Day Notice rather than the previous Two-Month Notice. The question that I have to consider is whether the Landlord accepted the pet damage deposit as partial payment for May 2018 rent, regardless of the Tenants' breach of the Act.

The Landlord explained his frustration that a Residential Tenancy Branch hearing, for an Order of Possession, could not be scheduled before the Tenants moved from the rental unit. The Landlord stated he served the Ten-Day Notice on May 4, 2018, yet he did not apply for Dispute Resolution until June 16, 2018. The Tenants moved from the rental unit on June 30, 2018. Given these timelines and the need to provide proper notice and exchange evidence amongst parties, I find that the Landlord's expectations for a hearing prior to June 30, 2018 were unrealistic.

Regardless, the Landlord made a choice to return the Tenants' security deposit and keep the Tenants' pet damage deposit after the tenancy ended. I accept that the Landlord is still in possession of the pet damage deposit, did not return the pet damage deposit and has not made a claim to apply the pet damage deposit as part of his monetary claim for loss of rent for June 2018.

As such, I find that the Landlord accepted the pet damage deposit as partial payment for May 2018 rent and that, along with the \$600.00 paid by the Tenants, was a full month's rent. When I consider Section 7(1) of the Act, I find that the Landlord has failed to provide sufficient evidence that he sustained any losses in respect of his rent for May 2018.

As I have found that the Landlord had accepted that the Tenants fully paid their rent for May 2018, I also find the 10-Day Notice was of no effect and that the tenancy continued in accordance with the Act. As a result, I find the Tenants did not have to pay rent for June 2018 due to compensation owed to the Tenants, pursuant to the Two-Month Notice and Section 51 of the Act. As a result, I dismiss the Landlord's Application to obtain a Monetary Order for the June 2018 unpaid rent.

As the Landlord's Application was unsuccessful, the Landlord should not receive compensation for the filing fee.

Conclusion

I dismiss the Landlord's Application without leave to reapply. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 26, 2018

Residential Tenancy Branch